

1 NICHOLAS M. WAJDA (State Bar #259178)
2 Attorney Email Address: nick@wadjalawgroup.com
3 WAJDA LAW GROUP, APC
4 11400 West Olympic Boulevard, Suite 200M
5 Los Angeles, California 90064
Telephone: (310) 997-0471
Facsimile: (866) 286-8433
Attorney for Plaintiff

6

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9

10 BEVERLY J. BAKER,

11 Plaintiff,

12 v.

13 NELSON & KENNARD,

14 Defendant.

Case No. 2:19-cv-01479

COMPLAINT FOR DAMAGES

**1. VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT, 15 U.S.C.
§1692 ET SEQ.;**

**2. VIOLATION OF THE ROSENTHAL FAIR
DEBT COLLECTION PRACTICES ACT,
CAL. CIV. CODE §1788 ET SEQ.**

DEMAND FOR JURY TRIAL

17

18

COMPLAINT

19

NOW comes BEVERLY J. BAKER (“Plaintiff”), by and through her attorneys, WAJDA
20 LAW GROUP, APC (“Wajda”), complaining as to the conduct of NELSON & KENNARD
21 (“Defendant”) as follows:

22

NATURE OF THE ACTION

23

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act
24 (“FDCPA”) under 15 U.S.C. §1692 *et seq.* and the Rosenthal Fair Debt Collection Practices Act
25 (“RFDCPA”) pursuant to Cal. Civ. Code §1788, for Defendant’s unlawful conduct.

27

JURISDICTION AND VENUE

28

2. This action arises under and is brought pursuant to the FDCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C. §1692, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1337.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Central District of California, and a substantial portion of the events or omissions giving rise to the claims occurred within the Central District of California.

PARTIES

4. Plaintiff is a 67 year old consumer residing in Diamond Bar, California, which is located within the Central District of California

5. Plaintiff is a natural “person” as defined by 47 U.S.C. §153(39).

6. Defendant is a “full-service collection firm” whose principal purpose is the collection of past due balances owed to other entities.¹ Defendant is a California law firm with a principal place of business located at 5011 Dudley Boulevard, Building 250, Bay G, McClellan, California.

7. Defendant is a “person” as defined by 47 U.S.C. §153(39).

8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

9. The instant action arises out of Defendant's attempts to collect upon an outstanding Bank of America consumer obligation ("subject consumer debt") allegedly owed by Plaintiff.

10. Plaintiff originally incurred the subject consumer debt for family and household purposes.

¹ <http://www.nelson-kennard.com/>

11. After incurring the subject consumer debt, Plaintiff allegedly defaulted on her payments to Bank of America.

12. Bank of American subsequently turned collection of the subject debt over to Defendant after Plaintiff's purported default.

13. On or around February 15, 2019, Defendant caused to be sent a correspondence to Plaintiff which sought collection of the subject consumer debt. *See Exhibit A.*

14. The correspondence identifies Defendant as "Attorneys at Law" and a "debt collector."

15. The correspondence further represents that it was signed by one of Defendant's attorney's, Jamie Forbes.

16. The nature of the collection letter demonstrates that the attorney purportedly sending the letter sent it as the product of a mass produced letter campaign, absent sufficient review.

17. In the upper right hand corner of the letter, Defendant lists the attorneys associated with Defendant's practice and their respective states of admission.

18. The name Jamie Forbes appears three separate times in this portion of the collection letter, with each appearance being associated with different combinations of states of admission.

19. This was either a mistake in the template used by Defendant, or represented a conscious attempt for Defendant to misrepresent the amount of attorneys associated with its practice in an effort to instill a heightened sense of fear in Plaintiff.

20. Further demonstrating the formulaic nature of Defendant's collection letter sent absent sufficient review is the nature of the RFDCPA and FDCPA disclosure in the correspondence.

21. Although Defendant's letter was addressed to Plaintiff, the RFDCPA and FDCPA disclosure portion of the letter clearly came from a letter designed to be sent to an attorney, rather than a consumer. *See Exhibit A* (e.g., "For the most part, collectors may not tell another person, **other than your office or your client's spouse**, about your client's debt.")

1 22. Had Defendant meaningfully review the collection letter and nature of Plaintiff's account
2 prior to sending the letter, it would have noticed the error in the template and fixed it accordingly.
3

4 23. The information in the bottom left hand corner of the letter further demonstrates the
5 likelihood that this letter was the product of a formulaic template sent absent sufficient review.
6

7 24. The bottom left hand portion of the letter reads "T1F.FRM [edited 10/31/18]."

8 25. This indication, in particular the reference to .FRM, illustrates that this letter is a formulaic
9 template letter that Defendant "edited" on 10/31/18, and subsequently changed only the
demographic and debt-related information prior to sending this letter to Plaintiff.

10 26. The automated nature of the manner in which Defendant sends its collection letters is further
11 demonstrated by the existence of a bar code on the bottom of the collection letter. This bar code is
12 likely included as a way to more readily track the mass amount of formulaic template collection
13 letters Defendant sends to consumers on a daily basis.
14

15 27. Additionally, Bank of America is one of the largest issuers of credit in the United States.
16 As such it stands to reason that Bank of America has a proportionally large number of accounts that
17 are referred to collection activities by third-party debt collectors such as Defendant.

18 28. Bank of America works with Defendant on a regular basis and Defendant sends hundreds
19 of identical collection letters to consumers on a daily basis.
20

21 29. Based upon the automated nature of Defendant's collection letter process, and the
22 representations inherent within such communications, it would be virtually impossible for a single
23 attorney to review the mass amount of collection letters Defendant sends in relation to Synchrony
24 debts.
25

26 30. The lack of meaningful review in the correspondence sent by Defendant is further evinced
27 upon considering and reviewing the multitude of complaints that have been filed against Defendant
28

1 in federal courts throughout the country, as well as with the Consumer Financial Protection
2 Bureau.²

3 31. These complaints elucidate a problematic course of conduct (*inter alia*, repeated attempts
4 to collect upon a debt not owed) which seemingly would or could have been avoided had
5 Defendant's attorneys meaningfully reviewed the correspondences they send to consumers.

6 32. Defendant's communications, purportedly reviewed by attorneys prior to being sent, are
7 sent with the goal to exert undue pressure on Plaintiff and consumers generally to compel them into
8 making payment out of fear that Defendant, a law firm, will file a lawsuit against them if payment
9 is not made.

10 33. As a result of receiving the correspondence, Plaintiff was unfairly confused regarding
11 Defendant's representations and examination of the subject consumer debt, and was further
12 subjected to undue pressure that an attorney had reviewed her account and determined it was proper
13 for legal action.

14 34. Plaintiff has suffered financial loss including expending assets dealing with Defendant's
15 conduct.

16 35. Plaintiff has further suffered a violation of her state and federally protected interests as a
17 result of Defendant's conduct.

18 **COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

19 36. Plaintiff repeats and realleges paragraphs 1 through 35 as though fully set forth herein.

20 37. Plaintiff is a "consumer" as defined by 15 U.S.C. §1692a(3) of the FDCPA.

21 38. Defendant is a "debt collector" as defined by §1692a(6) of the FDCPA, because it regularly
22 uses the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

23 _____
24 ² See https://www.consumerfinance.gov/data-research/consumer-complaints/search/?from=0&searchField=all&searchText=&size=25&sort=created_date_desc

1 39. Defendant is engaged in the business of collecting or attempting to collect, directly or
2 indirectly, defaulted debts owed or due or asserted to be owed or due to others, and debt collection
3 is the primary purpose of its business.

4 40. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction
5 due or asserted to be owed or due to another for personal, family, or household purposes.
6

7 **a. Violations of the FDCPA § 1692e**

8 41. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false,
9 deceptive, or misleading representation or means in connection with the collection of any debt.”

10 42. In addition, this section enumerates specific violations, such as:

11 “The false representation of – the character, amount, or legal status of any debt . . .
12 . . . 15 U.S.C. § 1692e(2).

13 “The false representation or implication that any individual is an attorney or that
14 any communication is from an attorney.” 15 U.S.C. § 1692e(3).

15 “The use of any false representation or deceptive means to collect or attempt to
16 collect any debt or to obtain information concerning a consumer.” 15 U.S.C.
17 §1692e(10).

18 43. Defendant violated 15 U.S.C. § 1692e, e(3), and e(10) by sending a correspondence to
19 Plaintiff stating that it was from, and reviewed by, an attorney. Upon information and belief, the
20 attorney whose signature appears on the correspondence allows their signature to be used on
21 hundreds of similar formulaic collection letters on a daily basis. Based on the sheer volume of
22 collection letters Defendant’s attorneys send on a daily basis, Defendant’s attorneys could not have
23 engaged in a meaningful review of collection letter sent and the underlying account(s) associated
24 with those letters. Instead, it is clear that Defendant’s collection letters were the result of a mass
25 produced campaign, sent absent sufficient review. Sending form collection letters en masse said to
26 be from an attorney when such attorney did not engage in a meaningful review of the letter and
27 associated accounts falsely implies that such attorney has reviewed the file and made the

1 professional, considered determination to send the letter. Instead, the lack of sufficient review and
2 the lack of any attorney judgment as to whether to send the collection letters is in violation of the
3 FDCPA.

4 44. Defendant further violated § 1692e, e(2), and e(10) through the repeated references to “your
5 client” included in the FDCPA/RFDCPA disclosures provided in the collection letter. These
6 repeated representations suggested that Plaintiff had an attorney in connection with this matter at
7 the time Defendant sent the collection letter. This amounts to a deceptive and misleading
8 communication, as it suggested to Plaintiff that there was some sort of legal matter proceeding
9 which would require Plaintiff to have representation. However, no legal action had been instituted
10 by Defendant at the time the collection letter, illustrating the deceptive and misleading nature of
11 Defendant’s representations.

12 45. Defendant further violated § 1692e and e(10) through the representations in the collection
13 letter that there were three different attorneys working for Defendant named Jamie Forbes.

14 **b. Violations of the FDCPA § 1692f**

15 46. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or
16 unconscionable means to collect or attempt to collect any debt.”

17 47. Defendant violated § 1692f when it unfairly and unconsciously attempted to collect on a
18 debt by falsely representing to Plaintiff that the correspondence was reviewed by an attorney. Based
19 upon the formulaic and mass produced nature of Defendant’s collection letter, Defendant unfairly
20 attempted to escalate the concern over the subject consumer debt in Plaintiff’s mind by suggesting
21 an attorney had reviewed her file and decided it was appropriate for legal action. These means
22 employed by Defendant only served to worry and confuse Plaintiff.

23 WHEREFORE, Plaintiff, BEVERLY J. BAKER, respectfully requests that this Honorable
24 Court enter judgment in her favor as follows:

- 1 a. Declaring that the practices complained of herein are unlawful and violate the
2 aforementioned bodies of law;
- 3 b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C.
4 §1692k(a)(2)(A);
- 5 c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided
6 under 15 U.S.C. §1692k(a)(1);
- 7 d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C.
8 §1692k(a)(3); and
- 9 e. Awarding any other relief as this Honorable Court deems just and appropriate.

10 **COUNT II – VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

- 11 48. Plaintiff restates and realleges paragraphs 1 through 46 as though fully set forth herein.
- 12 49. Plaintiff is a “person” as defined by Cal. Civ. Code § 1788.2(g).
- 13 50. The alleged subject debt is a “debt” and “consumer debt” as defined by Cal. Civ. Code §
14 1788.2(d) and (f).
- 15 51. Defendant is a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

16 **a. Violations of RFDCPA § 1788.13(c)**

17 52. The RFDCPA, pursuant to Cal. Civ. Code § 1788.13(c), prohibits a debt collector from
18 using “[a]ny communication with a debtor in the name of an attorney or counselor at law or upon
19 stationery or like written instruments bearing the name of the attorney or counselor at law, unless
20 such communication is by an attorney or counselor at law or shall have been approved or authorized
21 by such attorney or consumer at law.”

22 53. Defendant violated § 1788.13(c) of the RFDCPA through its representations that the subject
23 debt had been reviewed by an attorney prior to being sent. Given the mass-produced nature of
24 Defendant’s collection letter, Defendant’s suggestion that an attorney had meaningfully reviewed
25 the account prior to sending the collection letter violates the above referenced portion of the
26 RFDCPA.

1 **b. Violations of RFDCPA § 1788.17**

2 54. The RFDCPA, pursuant to Cal. Civ. Code § 1788.17 states that “Notwithstanding any other
3 provision of this title, every debt collector collecting or attempting to collect a consumer debt shall
4 comply with the provisions of Section 1692b to 1692j, inclusive of, and shall be subject to the
5 remedies in Section 1692k of, Title 15 of the United States Code.”
6

7 55. As outlined above, through their conduct in attempting to collect upon the subject debt,
8 Defendant violated 1788.17; and 15 U.S.C. §§1692 e and f of the FDCPA. Defendant engaged in
9 false and unfair conduct in its attempts to collect a debt from Plaintiff, in violation of the RFDCPA.

10 56. Defendant willfully and knowingly violated the RFDCPA. Defendant’s willful and
11 knowing violations of the TCPA should trigger this Honorable Court’s ability to award Plaintiff
12 statutory damages of up to \$1,000.00, as provided under Cal. Civ. Code § 1788.30(b).
13

14 WHEREFORE, Plaintiff, BEVERLY J. BAKER, respectfully requests that this Honorable
15 Court enter judgment in her favor as follows:

- 16 a. Declare that the practices complained of herein are unlawful and violate the aforementioned
17 statute;
- 18 b. Award Plaintiff actual damages, pursuant to Cal. Civ. Code § 1788.30(a);
- 19 c. Award Plaintiff statutory damages up to \$1,000.00, pursuant to Cal. Civ. Code §
20 1788.30(b);
- 21 d. Award Plaintiff costs and reasonable attorney fees as provided pursuant to Cal. Civ. Code
22 § 1788.30(c); and
- 23 e. Award any other relief as the Honorable Court deems just and proper.

24 Dated: February 27, 2019

 Respectfully submitted,

25 By: /s/ Nicholas M. Wajda

26 Nicholas M. Wajda

27 WAJDA LAW GROUP, APC

28 11400 West Olympic Boulevard, Suite 200M

 Los Angeles, California 90064

 Telephone: (310) 997-0471

1 Facsimile: (866) 286-8433
2 Email: nick@wadjalawgroup.com

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28